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NORTHERN GREEN VENTURES SDN BHD v. PENTADBIR TANAH, HULU LANGAT

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COURT OF APPEAL, PUTRAJAYA
NOR BEE ARIFFIN JCA
VAZEER ALAM MYDIN MEERA JCA
MARIANA YAHYA JCA
[CIVIL APPEAL NO: B-01(A)-553-10-2020]
19 AUGUST 2022

C

Abstract – *The land administrator, in conducting a land enquiry, is not obliged to accept the valuation done by any one of the party's valuer, even if such valuation is accepted by the other party. It is not for the parties to agree on the market value or any other valuation. The law gives that discretion to the land administrator. The land administrator decides on the adequacy of compensation, as provided in s. 12 of the Land Acquisition Act 1960; the valuation report prepared by the Government valuer or the private valuer merely act as a guide in determining the award of compensation.*

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LAND LAW: *Acquisition – Compensation – Objection – Difference in valuation by parties' valuers – Whether land administrator obliged to accept valuation by any one of party's valuer – Whether correct valuation should be one higher of two – Whether rejection of claim for injurious affection/severance correct – Whether there was breach of natural justice during land enquiry – Whether remaining land severed by compulsory acquisition legally inaccessible – Whether there should be compensation for costs of constructing bridge to provide access to scheduled land under claim for injurious affection – Whether application for building or planning permission requirement or pre-condition to claim for compensation – Land Acquisition Act 1960*

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The land belonging to the appellant was acquired for a waterworks project and the acquisition severed the scheduled land into two parts, namely Plot A and Plot B. The respondent awarded compensation, in the total sum of RM7,090,881.45, to the appellant. The appellant later filed a reference to the High Court, challenging the said compensation on the grounds that: (i) the appellant's valuer valued the land at RM861 per square meter ('psm') while the valuation by the Jabatan Penilaian dan Perkhidmatan Harta ('JPPH'), done at the behest of the respondent, was RM1,200 psm. The respondent had accepted the appellant's valuer valuation and valued the market value at RM861 psm. The correct valuation should have been as per JPPH's valuation which was the higher out of the two; (ii) the respondent erred in not allowing the following claims for injurious affection/severance, namely: (a) the loss of development potential in the sum of RM5,440,000; (b) cost

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of construction of a bridge between the two severed portions amounting to RM7,900,000; and (c) consequential losses totalling to RM590,805. The Judicial Commissioner ('JC'), assisted by two assessors, affirmed the respondent's decision on the market value of the scheduled land and allowed, in part, the claim for injurious affection/severance. Hence, the present appeal. The questions that arose for determination were: (i) whether the appellant suffered a breach of natural justice during the land enquiry, resulting from JPPH disclosing its valuation report only to the respondent and further, from the failure by JPPH and/or the respondent to disclose JPPH's valuation report to the appellant prior to the respondent's award; (ii) whether the appellant, having suffered a breach of natural justice at the land enquiry, should be further prejudiced by that breach of natural justice at the land reference by the High Court taking the position that the appellant was bound by the appellant's claim/valuation at the enquiry which was decided on by the respondent without the disclosure of the JPPH's valuation report; (iii) whether the appellant could be awarded an amount in excess of the amount stated or claimed specifically for the market value of the scheduled land during the land enquiry, on the basis that the increased amount did not exceed the total amount of compensation stated or claimed by the appellant, pursuant to para. 4(a) of the First Schedule to the Land Acquisition Act 1960 ('Act'); (iv) whether the assessors' opinion on a question of law, which was the application of para. 4(a) of the First Schedule to the Act, was *ultra vires* s. 40A of the Act; (v) whether the High Court ought to accept a valuation of the scheduled land that was accepted by both parties, in particular, the higher valuation of the scheduled land as valued by one party's valuer and endorsed by the other party's valuer; (vi) whether the endorsement by the appellant's valuer of the higher valuation of the scheduled land by the respondent's valuer was sufficient to establish a *prima facie* case for the appellant under para. 2 of the Third Schedule to the Act that the award for the scheduled land was inadequate; (vii) whether the remaining land, Plot A, was legally inaccessible. If this question is answered in the affirmative, whether compensation pursuant to para. 2(c) and/or (d) of the First Schedule to the Act ought to be granted for the loss of legal access to Plot A; (viii) whether Pengurusan Aset Air Berhad ('PAAB'), as the acquiring body of the scheduled land, had effectively admitted that there was no access to Plot A of the scheduled land, by its two letters, in which the acquiring body had stated its agreement for the appellant to construct a bridge to connect the remaining portions of the scheduled land and provided technical specifications for the design and construction of the said bridge; (ix) whether the appellant ought to be compensated for the costs of constructing the bridge to provide access to Plot A of the scheduled land under the appellant's claim for injurious affection; and (x) whether an application for building or planning permission was a requirement or pre-condition to claim for compensation under para. 2(a), (c) and/or (d) of the First Schedule to the Act.

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Held (awarding RM600,000 as additional compensation for construction of road)

Per Vazeer Alam Mydin Meera JCA delivering the judgment of the court:

(1) Questions (i) an (ii) were related. There was no requirement in law for the respondent to have informed the appellant of the valuation contained in JPPH's valuation report. The appellant had tendered a valuation report done by his valuer at the land enquiry and the respondent had given due consideration to both valuation reports in arriving at the award of compensation and, as such, the issue of breach of natural justice did not arise. The appellant was given ample opportunity to present the appellant's valuer's report and the market value assessed by the respondent was no less than that contained in the appellant's valuation report. Question (i) was answered in the negative. (paras 14, 29, 31 & 32)

(2) Questions (ii) and (iii) were related. The appellant, having tendered a valuation report to the respondent at the land enquiry, would have to stand by that report and could not resile from it at the land reference to seek a valuation that was higher just because JPPH's valuation report contained a higher market value. The appellant would be precluded from doing so, by virtue of para. 4(a) of the First Schedule to the Act, read together with para. 2(1) of the Third Schedule to the Act. Questions (ii) and (iii) were answered in the negative. (paras 34, 40 & 42)

(3) The assessors were required to give their opinions on the market value of the scheduled land, that was a question of fact. In giving that opinion, they had considered the sale value of comparable lands referred to by the appellant's valuer and JPPH's valuer. Both assessors were of the opinion that (i) the market value opined by the appellant's valuer was more accurate and they concurred with the respondent when he accepted that market value in order to assess compensation for the acquisition; and (ii) the respondent, having accepted the valuation of the appellant's valuer, the appellant would be prohibited from claiming anything higher than that market value at the land reference, by virtue of para. 4(a) of the First Schedule to the Act. The assessors were entirely correct to take that position as their opinion must necessarily be based within the confines of the provisions of the Act, particular the principles relating to the determination of compensation under the First Schedule to the Act within which falls para. 4(a). The answer to question (iv) was in the negative. (paras 45, 48 & 49)

(4) The land administrator, in conducting a land enquiry, was not obliged to accept any valuation done by any party's valuer, even if such valuation was accepted by the other party. It was not for the parties to agree on the market value or any other valuation. The law gives that

discretion to the land administrator. The land administrator decided on the adequacy of compensation, as provided in s. 12 of the Act, and was not bound to accept the valuation report prepared by the Government's valuer nor the private valuer which merely acted as a guide in determining the award of compensation. The parties could not dictate the amount of compensation by agreement between them. That decision is ultimately the land administrators to make, based on established principles. At the land enquiry, the court was not bound to accept any one of the opinions contained in the valuation reports adduced by any party. The court, with the assistance of the two assessors, was entitled to consider the opinion contained in all the valuation reports and arrive at its own independent findings. The law did not require the respondent, or the High Court, to have used the higher of the two market valuations in all circumstances. Which of the valuation was to be used would be very much dependant on the facts. The facts of the case, as analysed by the JC, did not warrant the use of the higher market value opined by JPPH's valuer. Question (v) was answered in the negative. (paras 51 & 55)

(5) Whether or not a *prima facie* case had been established was a question to be determined by the judge assisted by the two assessors on a careful consideration of the appellant's valuer's report. The JC had, after taking into consideration the views of the two assessors, found that the appellant had failed to discharge the burden of making out a *prima facie* case of inadequate award. The mere opinion of the valuer in the JPPH's valuation report, which was higher than that of the appellant's private valuer would not, by itself, establish a *prima facie* case of inadequacy of compensation, even if it was subsequently endorsed by the appellant's valuer. Question (vi) was answered in the negative (paras 59, 62 & 65)

(6) The appellant had framed questions (vii) and (viii) which related to the issue of severance. Plot A was legally inaccessible and compensation, pursuant to para. 2(c) and/or (d) of the First Schedule to the Act, ought to be granted for the loss of legal access as part of injurious affection to Plot A. Any access to Plot A, as contended by JPPH's valuer, could not be seen. In fact, PAAB had effectively admitted that there was no access to Plot A, by the contents of its letters, where PAAB had expressed its conditional agreement for the construction of a bridge to connect Plot A and Plot B. If Plot A was indeed accessible *via* the access roads, there would be no necessity for PAAB to write the letters. Question (viii) was answered in the affirmative. (paras 66, 73 & 77)

(7) The appellant had not made out a case showing that the only viable option for access was a bridge between Plot A and Plot B. The appellant's own architect had proposed a cost-effective option and that was to build a road connecting the two portions at the cost of

RM600,000. This was a pragmatic and cost-effective solution and there was no need for the appellant to construct a bridge at a phenomenal cost. Whilst question (x) was answered in the negative, the appellant ought to be compensated with an additional sum of RM600,000 being the cost of construction of the road and, this, the respondent was ordered to pay the appellant. (paras 83-85)

(8) Whilst planning for the land was not a pre-requisite or pre-condition to claim for compensation under para. 2(a), (c) and/or (d) of the First Schedule to the Act, the existence or otherwise of planning permission or development order would be a relevant consideration when the overall factual matrix of the case was considered. There must be a realistic prospect of the proposed development taking place. The relevance of the planning permission to a claim for compensation for loss of development potential under para. 2(a), (c) and/or (d) of the First Schedule to the Act is very much fact-driven and would depend on the peculiar circumstances of each case. It is not merely sufficient to submit an architect's proposed development plan and make a claim based on that proposed plan when there is no prospect for planning approval of that plan. The applicant must show that, legally, there are prospects for the plan to be approved and the development realised. In short, the proposed development plan must meet the requirements of the planning authority and conform to the existing statutes, rules and regulations governing such development. Only then would the applicant have a strong case to claim for loss of development potential. Question (xi) was answered in the negative *albeit* with the above-stated qualifications. (paras 91 & 92)

Case(s) referred to:

Alagappa Chettiar v. Collector Of Land Revenue, Kuala Lumpur [1968] 1 LNS 4 FC ***(refd)***

Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat [2021] 3 CLJ 1 FC ***(refd)***

B Surinder Singh Kanda v. The Government Of The Federation Of Malaya [1962] 1 LNS 14 PC ***(refd)***

Boustead Estates Agency Sdn Bhd v. Pentadbir Tanah, Baling, Kedah [2007] 4 CLJ 375 CA ***(refd)***

Collector Of Land Revenue v. Heng Long Investment Pte Ltd [2001] 3 SLR 217 ***(refd)***

Collector Of Land Revenue v. Looi Lam [1981] 1 LNS 102 FC ***(refd)***

Datuk Dr Murugasu Sockalingam & Anor v. Superintendent Of Lands And Surveys, First Division, Sarawak [1983] 1 LNS 30 FC ***(refd)***

Desa Kudalari Management Corporation v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2021] 1 LNS 107 CA ***(refd)***

JH Capital Services Sdn Bhd v. Pentadbir Tanah Daerah Petaling [2020] 1 LNS 241 CA ***(refd)***

Jitender Singh Pagar Singh & Ors v. Pentadbir Tanah Wilayah Persekutuan & Another Appeal [2012] 2 CLJ 165 CA ***(refd)***

Kelab Renang Pulau Pinang v. Pentadbir Tanah, Daerah Timur Laut, Pulau Pinang & Anor [2014] 5 CLJ 341 CA ***(dist)***
Malaysia Airline System Bhd v. Wan Sa'adi Wan Mustafa [2015] 1 CLJ 295 FC ***(refd)***
Mohd Shah Daud v. Pentadbir Tanah Dan Jajahan Kota Bharu [2016] 6 CLJ 806 CA ***(refd)***
Ng Tiou Hong v. Collector Of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC ***(refd)***
Ong Yan & Anor v. Collector Of Land Revenue, Alor Gajah, Malacca [1985] 1 LNS 105 HC ***(refd)***
Oriental Rubber & Oil Palm Sdn Bhd v. Pemungut Hasil Tanah, Kuantan [1983] 2 CLJ 30; [1983] CLJ (Rep) 677 HC ***(refd)***
Pelangi Cendana Sdn Bhd v. Pentadbir Tanah Daerah Kluang [2013] 1 LNS 928 HC ***(dist)***
Pengerang Farm Sdn Bhd v. Pentadbir Tanah Daerah Kota Tinggi [2017] 1 LNS 66 CA ***(refd)***
Pentadbir Tanah Daerah, Gombak lwn. Huat Heng (Lim Low & Sons) Sdn Bhd [1991] 1 CLJ 16; [1991] 1 CLJ (Rep) 356 SC ***(refd)***
Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar [2020] 1 CLJ 1 FC ***(refd)***
Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***
Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan [2007] 5 CLJ 71 FC ***(refd)***
Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals [2011] 1 CLJ 95 CA ***(refd)***
Wiseman and Another v. Borneman and Others [1969] 3 All ER 275 ***(refd)***

Legislation referred to:
Federal Constitution, art. 13(1)
Land Acquisition Act 1960, ss. 8, 12(1), 14, 40A(1), (2), 40C, 49(1), First Schedule paras 1, 2(c), (d), 4(a), Third Schedule paras 1, 2(1), 3

Land Acquisition Act [Ind], s. 25(1)
Land Acquisition Act [Sing], s. 35(1)

For the appellant - Raymond Mah, Denise Phang & Eric Toh; M/s Mah Weng Kwai & Assocs
For the respondent - Nur Irmawatie Daud & Mohd Abdul Hakim Mohd Ali; SLOs, Selangor

[Editor's note: Appeal from High Court, Shah Alam; Land Review No: BA-15-154-07-2019 ((overruled in part).]

Reported by Najib Tamby

JUDGMENT

Vazeer Alam Mydin Meera JCA:

Introduction

[1] This appeal emanates from the decision of the High Court in respect of a land reference under the Land Acquisition Act 1960 ("the Act").

[2] There was a land acquisition for a waterworks project known as "Projek Skim Bekalan dan Pengagihan Air Langat 2 (Fasa 1) – Pakej 15" ("the project"). The appellant, being the registered proprietor, filed a reference to the High Court to challenge the compensation awarded by the respondent for the acquisition of a portion of the appellant's land held under GM 1050, Lot 899, Mukim Cheras, District of Hulu Langat, Selangor ("the scheduled land").

[3] At the High Court, the appellant's objection to the award of compensation made by the respondent centred on the following:

(i) The issue of what is the market value of the scheduled land. The appellant's valuer valued at RM861 per sqm, whilst the valuation by the Jabatan Penilaian dan Perkhidmatan Harta ("JPPH") done at the behest of the respondent, put it at RM1,200 per sqm. The respondent had accepted the appellant's valuer's valuation and valued the market value at RM861 psm. The appellant contended that the correct valuation should have been as per the JPPH valuation, which was the higher of the two. In this regard, the appellant sought the difference in value as additional compensation.

(ii) In respect of compensation for injurious affection/severance, the following claims of appellant's claim were not allowed by the respondent:

(a) loss of development potential in the sum of RM5,440,000;

(b) cost of construction of a bridge between the two severed portions amounting to RM7,900,000; and

(c) consequential losses totalling RM590,805.02.

The appellant contended that the respondent had erred in not allowing the above heads of claim for injurious affection/severance.

[4] The learned Judicial Commissioner having heard the land reference with the assistance of two assessors as required under the Act affirmed the respondent's decision in regard to the market value of the scheduled land, whilst allowing in part the claim for injurious affection/severance.

[5] The appellant being dissatisfied with that decision of the learned Judicial Commissioner appealed to this court by framing ten questions of law, which we will allude to shortly, for answers from this court.

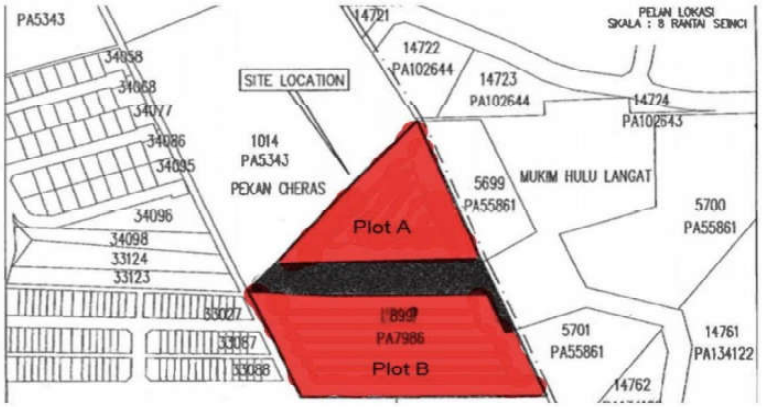
Brief Background

[6] The appellant is the registered proprietor of the scheduled land which was declared for intended acquisition by way of publication of the statutory Form D in the Selangor State *Gazette* No. 1700 dated 27 April 2017 pursuant to s. 8 of the Land Acquisition Act 1960.

[7] As a result of the partial acquisition of the scheduled land, the remainder was split into two portions as shown in the plan below, namely:

(i) a triangular portion measuring approximately 12,381.49 square meters to the north of the scheduled land ("Plot A"); and

(ii) a trapezoidal portion measuring approximately 21,646.77 square meters to the south of the scheduled land ("Plot B").



[8] On 16 May 2018, the respondent awarded the appellant a total sum of RM7,090,881.45 as compensation for the acquisition ("award"), the breakdown of which is as follows:

No.	Item of claim	Amount (RM)
6.1	Market value of land acquired of land acquired (6,946.14 sm @ RM861 psm)	5,980,635.15
6.2	Severance (Plot A) (5% x RM861 psm x 12,381.49)	533,023.15
6.3	Injurious affection (Plot A) (5% x RM861 psm x 12,381.49)	533,023.15
6.4	Architect costs	30,000.00
6.5	Quantity Surveyor costs	14,200.00
	Total compensation awarded	**7,090,881.45**

[9] On 26 June 2018, the appellant submitted the statutory Form N to the respondent objecting to the award on grounds stated therein. The appellant's objections were then referred to the High Court *via* the statutory Form O. The High Court then proceeded to hear the matter with the aid of the two assessors and deliver its decision as contained in the order dated 21 September 2020, which is the subject of this appeal.

[10] By that order dated 21 September 2020, the High Court maintained the market value of the scheduled land at RM861 psm as assessed by the respondent. However, in respect of compensation for severance and injurious affection, specifically for Plot A, the High Court increased the compensation by assessing it at 25% of the market value of the remaining land, *ie*, 25% x RM861 x 12,381.49, that works out to an additional compensation of RM1,599,069.70 over and above the respondent's award of RM1,066,046.30. The other awards of the respondent were maintained.

[11] The appellant's right of appeal to the Court of Appeal is provided in s. 49(1) of the Act, and that reads:

> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

Hence, there can be no appeals against the award of compensation *per se* and only appeals based on questions of law are permissible. This was confirmed by the Federal Court in *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1; [2021] 4 MLJ 1, where the court held:

> [46] It follows from the preceding paragraph that appeals to the Court of Appeal and to the Federal Court may only be mounted on questions of law.

[12] In *Amitabha Guha* the Federal Court also explained what constitutes a question of law, and they include:

(i) an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case;

(ii) questions about what the correct legal test is and whether the established facts satisfy the legal test;

(iii) questions on whether a decision-maker has jurisdiction to determine a particular matter;

(iv) errors of law committed by a decision-maker including the application of the wrong law, or a finding of fact in complete absence of any evidence;

(v) correctness of:

(a) pure statements of law (*eg*, as to correct interpretation of a statutory provision); and

(b) the inferring of a conclusion from the primary facts (where the process of inference involves assumptions as to the legal effect of consequences of the primary facts).

[13] In keeping with the requirements of s. 49(1) of the Act, the appellant has raised ten questions of law.

First And Second Questions

[14] The first and second questions of law are somewhat related, and they are:

(i) Whether the appellant has suffered a breach of natural justice during the land enquiry resulting from JPPH disclosing its valuation report only to the respondent and further from the failure by JPPH and/or the respondent to disclose JPPH's valuation report to the appellant prior to the respondent's award? ("first question")

(ii) Whether the appellant, having suffered a breach of natural justice at the land enquiry, should be further prejudiced by that breach of natural justice at the land reference by the High Court taking the position that the appellant is bound by the appellant's claim/valuation at the land enquiry which was decided on by the respondent without the disclosure of the JPPH's valuation report? ("second question")

[15] The appellant complains that it had suffered a breach of natural justice during the land inquiry before the respondent as:

(i) the valuation report prepared by the JPPH was disclosed only to the respondent and not to the appellant; and

(ii) the respondent failed to disclose or order the disclosure of JPPH's valuation report to the appellant.

[16] Hence, appellant submits that it ought not be further prejudiced during the land reference proceedings by the High Court's finding that the appellant is bound by the appellant's claim at the land enquiry based on the valuation made by the appellant's valuer.

[17] The first issue is whether the appellant was entitled to a copy of the JPPH's valuation report at the land enquiry. The learned Judicial Commissioner held that:

> [29] To the complaint by the Applicant that the LA ought to have informed it about the fair market value in the JPPH report, there is nothing in the LA Act that required the LA to do so. No such duty was imposed. There is no legal requirement for the parties to exchange valuation reports nor is there any duty imposed on the LA to divulge what is contained in each side's report. Therefore, the LA cannot be faulted for not doing so.

[18] Learned counsel for the appellant contends that this is an erroneous statement of the law by the learned Judicial Commissioner and further argues that the Act being a law that allows for compulsory acquisition of land and one that deprives landowners of their property must be construed such as to imply rules as to natural justice and procedural fairness in order to be consistent with the protection afforded to property owners pursuant to art. 13(1) of the Federal Constitution. In this regard, learned counsel for the appellant has referred to the House of Lords decision in *Wiseman and Another v. Borneman and Others* [1969] 3 All ER 275 where it was held that:

> It is reasonably clear on the authorities that where a statutory tribunal has been set up to decide final questions affecting parties' rights and duties, if the statute is silent on the question, the courts will imply into the statutory provision a rule that the principles of natural justice should be applied. This implication will be made on the basis that Parliament is not presumed to take away parties' rights without giving them an opportunity of being heard in their interest. In other words, Parliament is not to be presumed to act unfairly.

[19] Further, learned counsel for the appellant submits that the respondent when presiding over a land enquiry would be carrying out a *quasi*-judicial function (see: *Alagappa Chettiar v. Collector Of Land Revenue, Kuala Lumpur* [1968] 1 LNS 4; [1968] 1 MLJ 243; *Oriental Rubber & Oil Palm Sdn Bhd v. Pemungut Hasil Tanah, Kuantan* [1983] 2 CLJ 30; [1983] CLJ (Rep) 677; [1983] 1 MLJ 315). In this regard, learned counsel adds that where proceedings are *quasi*-judicial in nature, the tribunal that conducts the proceedings must observe the dictate of natural justice (see: *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar* [2020] 1 CLJ 1; [2020] 1 MLJ 141, FC), which would include procedural fairness (see: *Malaysia Airline System Bhd v. Wan Sa'adi Wan Mustafa* [2015] 1 CLJ 295; [2015] 1 MLJ 757, FC). In this regard, counsel submits that the appellant must know what evidence has been given and what statements have been made affecting its rights and must be given a fair opportunity to correct or contradict them. The appellant further contends that the respondent when conducting the land enquiry "must not hear evidence or receive representations from one side behind the back of the other" (see: *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14; [1962] 1 MLJ 169, PC).

[20] Relying on the above case authorities, learned counsel for the appellant submits that as the respondent in conducting the land enquiry is being tasked with a *quasi*-judicial function to determine the compensation payable to the appellant, he ought to require that the JPPH valuation report be disclosed to the appellant before he hands down the award. The appellant argues that it should be given the opportunity to respond to or rely on the JPPH valuation report, or even amend or revise its own valuation report

based on the evidence and statements in the JPPH report. Thus, learned counsel for the appellant submits that the respondent should have disclosed the JPPH's valuation of the market value of the scheduled land at RM1,200 psm to the appellant during the land enquiry and the failure to do so has deprived it of the opportunity to be heard on this issue. The appellant further contends that the failure by the respondent to disclose such important evidence has a continuing and lasting effect on the appellant's right to adequate compensation.

[21] On the other hand, learned counsel for the respondent submits that the procedure adopted by the respondent in conducting the land enquiry was in accordance to the provisions of the Act, and that the learned Judicial Commissioner was correct in law to have held that there was no breach of natural justice as contended by the appellant.

[22] Now, the starting point to answer these two questions would be s. 12 of the Act that reads:

> **12 Enquiry by the Land Administrator**
>
> (1) On the date appointed under section 10(1) **the Land Administrator shall make full enquiry into the value of all scheduled lands** and shall as soon as possible thereafter **assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule;**
>
> Provided the **Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer** prior to making an award under section 14.
>
> (2) The Land Administrator shall also enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land and into the objections, if any, made by any interested person to the area of any scheduled land.
>
> (3) The Land Administrator may for sufficient cause to be recorded by him in writing postpone any enquiry or adjourn any hearing of an enquiry from time to time. (emphasis added)

[23] In *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals* [2011] 1 CLJ 95 the Court of Appeal reiterated that the Act "is a complete and comprehensive Act on the substantive law, procedure and forms. It ensures that no person would be deprived of his constitutional right to adequate and fair compensation without a proper inquiry, when deprived by the State of his property" and held that:

> [4] The LAA 1960 is a special Act relating to the acquisition of land, the procedure for the assessment of compensation to be made on account of such acquisition and all matters incidental thereto, including the manner, procedure, and circumstances upon which any dissatisfied party to an

award of compensation may pursue legal redress in court. In view of it being a special Act we are unanimous that the statutory provisions therein must be strictly adhered to and made applicable to all relevant parties. All procedural steps leading for a final determination of any award shall be in accordance with the provisions of LAA 1960.

[24] And, the Court of Appeal in *Mohd Shah Daud v. Pentadbir Tanah Dan Jajahan Kota Bharu* [2016] 6 CLJ 806; [2016] 3 AMR 827 held that:

> Where a person has been deprived of his property not out of his own free choice, there must be **adequate compensation** paid for that property. Generally, the **adequacy of compensation is measured by reference to the market value of the property at the time of the acquisition.**
>
> (emphasis added)

[25] The Federal Court in *Ng Tiou Hong v. Collector Of Land Revenue, Gombak* [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 had laid down the applicable principles in determining the market value of compulsorily acquired land according to the provisions in the First Schedule to the Act taking into account the facts and circumstances of a particular case. The Federal Court said:

> We consider the following as the main principles:
>
> Firstly, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future *eg*, the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. **Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence.** (*Superintendent Of Lands And Surveys, Sarawak v. Aik Hoe & Co. Ltd.* [1966] 1 LNS 188, *Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam* [1939] AC 302, 312, and *Nanyang Manufacturing Co. v. Collector of Land Revenue, Johore* [1954] MLJ 69).

> The safest guide is evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparables subject to making allowance for all the circumstances. (emphasis added)

[26] That there shall be adequate compensation for compulsory acquisition of land is also enshrined in art. 13 of the Federal Constitution that provides:

(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[27] The main provisions that lay out the manner in which compensation is to be determined are found in paras. 1 and 2 of the First Schedule to the Act. Though the term "adequate compensation" is not defined in the Federal Constitution or the Act, in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526 the Federal Court in construing the words "adequate compensation" stated that the principle governing adequate compensation is the principle of equivalence. According to this principle, affected landowners or interested persons are entitled to be compensated fairly for their loss but should not receive any more or less than the loss which resulted from the compulsory acquisition (see: *Pentadbir Tanah Daerah, Gombak lwn. Huat Heng (Lim Low & Sons) Sdn Bhd* [1991] 1 CLJ 16; [1991] 1 CLJ (Rep) 356; [1990] 3 MLJ 282, SC).

[28] Now, s. 12(1) of the Act provides that in assessing the amount of compensation, which in the opinion of the Land Administrator is appropriate in each case, he must do so according to the consideration set out in the First Schedule to the Act. And in so doing, the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under s. 14. The use of the word "may" in the proviso to s. 12(1) means that it is not mandatory for the Land Administrator to obtain a valuation report. However, as a matter of practice a valuation report is obtained from the JPPH to assist the Land Administrator to ascertain the appropriate market value of any land that is compulsorily acquired. However, the Land Administrator is not bound to follow the opinion of the JPPH valuer, as it is merely a tool or a guide to assist him in making an award under s. 14. This principle was reiterated by the Federal Court in *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Rembau Negeri Sembilan* [2009] 1 CLJ 13; [2008] 6 MLJ 763, where the court held that:

> ... as a matter of fact the Land Administrator is not bound to accept the valuation report prepared by the government valuer which merely acts as a guide in determining the award of compensation.

[29] We agree with the learned Judicial Commissioner that at the land enquiry, there is no requirement in law for the respondent to have informed the appellant of the valuation contained in the JPPH valuation report. In the

Act, there is no such duty imposed on the respondent. Nor does the Act enjoin parties to the land enquiry to exchange valuation reports, as is provided for at the land reference stage at the High Court. This can be seen in the Third Schedule to the Act, where in paras. 2 and 3 it is provided as follows:

> 2. Valuer's report and oral evidence
>
> (1) **The applicant's valuer's report alone must establish a *prima facie* case for the applicant.**
>
> (2) Oral evidence by the applicant's valuer shall only be adduced during cross-examination and re-examination, if any.
>
> (3) The respondent's valuer's report must be sufficient to rebut the applicant's valuer's report.
>
> (4) Subparagraph (2) shall apply to the respondent's valuer as it applies to the applicant's valuer.
>
> 3. Filing and service of valuer's report
>
> (1) Each party to the proceeding shall, not less than seven days before the date of hearing, file in Court four copies of his valuer's report.
>
> (2) **Each party to the proceeding shall, not less than twenty-one days before the date of hearing, serve on the other party a copy of his valuer's report.**
>
> (3) **Each party to the proceeding shall, not less than seven days before the date of hearing, serve on the other party and file in Court his valuer's reply to the other party's valuer's report.**
>
> (emphasis added)

[30] Hence, if there was a legal requirement for the JPPH valuation to be served on the appellant during the land enquiry, then there would be specific provisions in that regard in the Act. The lack of any such provision in the Act, *in contra* distinction to the provisions in para. 3 of the Third Schedule to the Act, must be taken as Parliament's intent in not making available such a right to the appellant at the land enquiry stage.

[31] We noted that the appellant had also tendered a valuation report done by his valuer at the land enquiry and the respondent had considered both valuation reports in making his determination as to the appropriate market value of the scheduled land. In this regard, the learned Judicial Commissioner made the following finding:

> (24) I have perused and examined the notes made by the LA during the enquiry and having done so it is my view that the LA had indeed fully considered the contents of the 2 valuation reports that were before him before he made the decision to accept the valuation report of the Applicant. In his decision he clearly stated that his decision was based on a consideration of the contents of the two valuation reports submitted to him.

We agree with that finding and concur with the learned Judicial Commissioner that the respondent had given due consideration to both valuation reports in arriving at the award of compensation, and as such the issue of breach of natural justice does not arise. The appellant was given ample opportunity to present the appellant's valuer's report, and the market value assessed by the respondent is no less than that contained in the appellant's valuation report.

[32] Hence, we answer the first question in the negative. We do not find the appellant had suffered a breach of natural justice during the land enquiry resulting from JPPH disclosing its valuation report only to the respondent, nor from the failure by JPPH and/or the respondent to disclose JPPH's valuation report to the appellant prior to the respondent's award.

[33] Learned counsel for the appellant in submitting on the second question further contends that the appellant, having suffered a breach of natural justice at the land enquiry, was further prejudiced by that breach of natural justice at the land reference when the High Court decided that the appellant is bound by the appellant's claim/valuation at the land enquiry which was decided on by the respondent without the disclosure of the JPPH's valuation report. Hence, learned counsel for the appellant argues that the appellant's right to adequate compensation was prejudiced.

Third Question

[34] The second question is also somewhat related to the third question, which is:

> Whether the appellant can be awarded an amount in excess of the amount stated or claimed specifically for the market value of the Scheduled Land during the land inquiry on the basis that the increased amount does not exceed the total amount of compensation stated or claimed by the appellant pursuant to paragraph 4(a) of the First Schedule to the Act? ("third question")

[35] Learned counsel for the appellant submits that the answer to the third question should be in the affirmative and that the learned Judicial Commissioner had erred in accepting the opinion of the assessors that para. 4(a) of the First Schedule to the Act applied to the appellant. Learned counsel further submits that the appellant can be awarded an amount in excess of the amount stated or claimed specifically for the market value of the Scheduled Land during the land enquiry on the basis that the increased amount does not exceed the total amount of compensation claimed by the appellant at the land enquiry. In support of that contention, learned counsel for the appellant has referred to the High Court decision in *Pelangi Cendana Sdn Bhd v. Pentadbir Tanah Daerah Kluang* [2013] 1 LNS 928 where the High Court held that para. 4(a) does not specifically restrict the award to the type of compensation so long as the amount awarded does not exceed the total compensation amount claimed at the land enquiry.

[36] In support of the proposition that the limitation of award in para. 4(a) applies to the total amount of compensation claimed and not separate heads of claim, learned counsel for the appellant has also referred to the Singapore Court of Appeal decision in *Collector Of Land Revenue v. Heng Long Investment Pte Ltd* [2001] 3 SLR 217 which involved the interpretation of the older version of s. 35(1) of the Singapore Land Acquisition Act. Learned counsel had also referred to several Indian cases which the Singapore Court of Appeal had relied on in *Collector Of Land Revenue v. Heng Long Investment Pte Ltd*. The Indian cases involved the interpretation of s. 25(1) of their Land Acquisition Act.

[37] The older version of s. 35(1) of the Singapore Land Acquisition Act considered by the Singapore Court of Appeal in *Collector Of Land Revenue v. Heng Long Investment Pte Ltd* read:

> Where the applicant has made a claim to compensation pursuant to any notice under section 8, the amount awarded to him shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 10.

Whilst s. 25(1) of the Indian Land Acquisition Act (as it stood prior to 1984) and considered by the Indian Courts particularly in *The Special Tahsildar (Land Acquisition) Krishna Water Supply Project Scheme Tiruvallur v. G Natesan and Others* LNIND 2000 MAD 868, read as follows:

> 25 Rules as to amount of compensation
>
> (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

[38] Now, para. 4(a) of the First Schedule to the Act states as follows.

> 4. Limitation on award
>
> Where at any inquiry made by the Land Administrator under section 12, or in any statement in writing required by the Land Administrator under subsection 11(2), any person interested has:
>
> (a) **made a valuation of or claimed compensation** for any land or any interest therein, such person shall not at any time be awarded any amount in excess of the amount stated or claimed; (emphasis added)

[39] There is a marked difference between the words of our para. 4(a) of the First Schedule to the Act, the Singapore s. 35(1) and the Indian s. 25(1). The Malaysian provision is much wider in that it refers not merely to the amount of compensation claimed but also to valuation done by the appellant. Paragraph 4(a) of the First Schedule to the Act reads "... any person interested has made a valuation of or claimed compensation ... such person shall not at any time be awarded any amount in excess of the amount stated or claimed ...". Thus, there are two matters covered in para. 4(a). First,

where the claimant has "made a valuation of", and the other is the claimant has "claimed compensation". Thus, when any interested person, which includes a registered proprietor such as the appellant, has made a valuation of the land, and therein stated the market value of the land, which is then submitted to the Land Administrator at the land enquiry, he shall be precluded from seeking a valuation higher than that which he had submitted at the land enquiry. And the High Court hearing the land reference shall not award "any amount in excess of the amount stated" in that valuation. It must be noted that there is no similar provision in the Singapore or Indian statutes referred to by learned counsel for the appellant. Hence, in the circumstances of the facts and issue before us, we do not find the authorities from Singapore or India cited by learned counsel for the appellant helpful or persuasive.

[40] In the premise, the appellant having tendered a valuation report to the respondent at the land enquiry would have to stand by that report and cannot resile from it at the land reference to seek a valuation that is higher just because the JPPH valuation report contains a higher market value. The appellant would be precluded from doing so by virtue of the provisions of para. 4(a) of the First Schedule to the Act read together with para. 2(1) of the Third Schedule to the Act, where it is provided that:

> 2. Valuer's report and oral evidence
>
> (1) **The applicant's valuer's report alone must establish a *prima facie* case for the applicant.** (emphasis added)

[41] In this regard, we concur with the findings of the learned Judicial Commissioner, where in accepting the opinion and views of the two assessors, she had disallowed the appellant's attempt to revisit the market value of the scheduled land, for among others the following reasons:

(i) the case of *Pelangi Cendana Sdn Bhd* (*supra*) was distinguished on the facts, *ie*, that case dealt with a fresh application for injurious affection at the land reference stage, which had not been claimed at the land enquiry before the Land Administrator. The High Court allowed the fresh head of claim for injurious affection on grounds that para. 4(a) did not restrict the award to the type of compensation but merely to the total amount to be awarded, which shall not exceed the amount claimed;

(ii) the appellant was not satisfied with the market value of the scheduled land, which was contained in the appellant's own expert's valuation report, and that para. 4(a) precluded them from seeking a higher market valuation than that stated in their very own valuation report;

(iii) both assessors were *ad idem* in their opinion that para. 4(a) applied in this case and that the valuation report prepared by the appellant's valuer was not erroneous nor did it take into account unrelated matters or issues;

(iv) the respondent had considered every aspect of the contents of both valuation reports and had chosen to accept the market valuation of the appellant's valuer;

(v) the appellant, therefore, could not be awarded any amount in excess of the valuation stated in its valuation report in respect of the market value of the scheduled land.

[42] Hence, for the above reasons, we answer the second and third questions in the negative.

Fourth Question

[43] The fourth question of law raised by the appellant is:

> Whether the assessors' opinion on a question of law (that is the application of Paragraph 4(a) of the First Schedule to the Act is *ultra vires* Section 40A of the Land Acquisition Act 1960? ("fourth question")

[44] Learned counsel for the appellant submits that the assessors' opinion on the application of para. 4(a) of the First Schedule to the Act, which counsel states is a question of law, is *ultra vires* s. 40A of the Act. Further, learned counsel for the appellant contends that the non-observance of ss. 40A(2) and 40C of the Act also amounts to a misdirection by the High Court which renders the decision of the High Court susceptible to appellate correction.

[45] Our answer to fourth question is also in the negative for the following reasons.

[46] Section 40A(1) and (2) of the Act read:

> 40A Constitution of the Court
>
> (1) Except as provided in this section the Court shall consist of a Judge sitting alone.
>
> (2) Where the objection before the Court is in regard to the amount of compensation, the Court shall appoint two assessors (one of whom shall be a valuation officer employed by the Government) for the purpose of aiding the Judge in determining the objection and in arriving at a fair and reasonable amount of compensation.

[47] Whilst s. 40C of the Act provides:

> 40C Opinion of assessors
>
> The opinion of each assessor on the various heads of compensation claimed by all persons interested shall be given in writing and shall be recorded by the Judge.

In *Amitabha Guha* (*supra*) the Federal Court explained the role of the assessors, which is to "give non-binding opinions in writing on questions of fact based on the evidence" and added:

> The Government assessor and the private assessor hear and consider the evidence and arrive at an opinion on the facts, which is then presented to the judge in the form of a written opinion: see s. 40C of the LAA 1960. Even though the assessors are sources of information on matters within their own special skill or knowledge, they are not expert witnesses as their advice does not amount to evidence. *More pertinently, the assessors and the judge are required to apply the Principles Relating To The Determination of Compensation under the First Schedule of the LAA 1960.* (emphasis added)

[48] In the present case, the assessors were required to give their opinion of on the market value of the scheduled land, that is a question of fact. In giving that opinion, they had considered the sale value of comparable lands referred to by the appellant's valuer and the JPPH valuer. Both assessors were of the opinion that the market value opined by the appellant's valuer was more accurate and they concurred with the respondent when he accepted that market value in order to assess compensation for the acquisition. The assessors also opined that the respondent having accepted the valuation of the appellant's valuer, the appellant would be prohibited from claiming anything higher than that market value at the land reference by virtue of the provisions of para. 4(a) of the First Schedule to the Act. We are of the view that the assessors were entirely correct to take that position as their opinion must necessary be based within the confines of the provisions of the Act, particularly the Principles Relating To The Determination of Compensation under the First Schedule to the Act, within which falls para. 4(a).

[49] We further noted that the learned Judicial Commissioner had independently put her mind to the issue, which is reflected in the following paragraphs of the grounds of judgment that reads:

> (53) ... Here the Applicant is not satisfied with the market value of the scheduled land which it based its claim on and which was duly allowed by the LA. Can it now abandon the amount it relied on in its own valuation report and prefer the respondent's recommended market value?
>
> (54) The 2 assessors were *ad idem* that the award given by the LA should not be disturbed as the award was more than generous taking into consideration the peculiar features attached to the scheduled land.
>
> (55) *On my part I am aware that I am not obligated by law to accede to their views. I was at liberty to consider the respective valuation reports and the submissions by the parties. Having considered every aspect of the case and taking into account the submissions of both parties it was my decision to accept the opinion of my two assessors that paragraph 4(a) of the 1st Schedule applied to the Applicant in this case.* Furthermore, I noted that the valuation report prepared by the Applicant's valuer was not erroneous nor did it take into account unrelated matters or issues. The LA had considered every aspect of the contents of both valuation reports and had chosen to allow the Applicant's claim. The Applicant could not therefore be awarded any amount in excess of the amount stated or claimed for the market value of the scheduled land. (emphasis added)

Thus, we do not find any merit in the contention of learned counsel for the appellant that the assessors' opinion on the application of para. 4(a) of the First Schedule to the Act to the appellant's claim at the High Court is *ultra vires* s. 40A of the Land Acquisition Act 1960. Wherefore, we answer the fourth question in the negative.

Fifth Question

[50] We now move on to the fifth question, and that is:

> Whether the High Court ought to accept a valuation of the Scheduled Land that is accepted by both parties, in particular, the higher valuation of the Scheduled Land as valued by one party's valuer and endorsed by the other party's valuer? ("fifth question")

[51] The short answer to this is "No". The Land Administrator in conducting a land enquiry is not obliged to accept any valuation done by any party's valuer, even if such valuation is accepted by the other party. It is not for the parties to agree on the market value or any other valuation. The law gives that discretion to the Land Administer, as was reiterated by the Court of Appeal in *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah Rembau, Negeri Sembilan* (*supra*). The Land Administrator decides on the adequacy of compensation as provided in s. 12 of the Act and is not bound to accept the valuation report prepared by the Government valuer nor the private valuer, which merely act as guide in determining the award of compensation. The parties cannot dictate the amount of compensation by agreement between them. That decision is ultimately the Land Administrator's to make based on established principles. And at the land enquiry, the court is not bound to accept any one of the opinion contained in the valuation reports adduced by any party. The court, with the assistance of the two assessors, was entitled to consider the opinions contained in all the valuation reports and arrive at its own independent findings. See: *Desa Kudalari Management Corporation v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2021] 1 LNS 107, (CA); *Pengerang Farm Sdn Bhd v. Pentadbir Tanah Daerah Kota Tinggi* [2017] 1 LNS 66 (CA).

[52] However, in *Jitender Singh Pagar Singh & Ors v. Pentadbir Tanah Wilayah Persekutuan & Another Appeal* [2012] 2 CLJ 165; [2012] 1 MLJ 56 this court held that where both the Government and private valuers had applied the correct principles of valuation, the court was to adopt the valuation that favoured the landowner. Thus, everything being equal in the method of valuation, the higher of the valuation in the Government or private valuation is to be adopted, unless there are compelling reasons not to.

[53] In the present case, the High Court was of the view that the principles of valuation adopted by the JPPH valuer, particularly the historical sales comparable used, were not the most appropriate. There were better

comparable historical transactions and these were referred to in the appellant's valuer's valuation report. The learned Judicial Commissioner had alluded to this in the grounds of judgment:

> (36) Turning to the comparables used by both valuers in coming to a fair market value of the scheduled land, it is noted that the Applicant's valuers offered 4 comparables which as aged between 2015 and 2016. Out of these 4 comparables, the private valuer favoured the 4th one, *ie*, a parcel of freehold residential land zoned for residential purposes held under GRN 44783/Lot 3443, Mukim of Ulu Langat, District of Hulu Langat. Based on the land area of 16.908 hectares the consideration analysis was approximately RM80 per square foot at RM861 psm.
>
> (37) The JPPH valuer on the other hand gave 5 comparables aged between 2013 to 2015 which yielded on average a discernible value from RM645.00 psm to RM1,945.00 psm. Out of those 5 comparables, he picked the 1st comparable as it was a most recent transaction. He then concluded that the market value of the scheduled land should be RM1,200 psm.
>
> ...
>
> (41) Notably the private valuer was not wrong to base his assessment of the value on the land with potential for residential building whereas the JPPH concentrated on comparables for category of land, express conditions attached to the land as well as whether consent had been obtained to convert its status from rubber plantation to residential building.
>
> (42) On this score I was of the view therefore that the private valuer was within his term of reference to quantify the value of the property as he did and I find that there was no appealable error in his method of computation of the market value of the property. Therefore, it is my finding on the facts that the Applicant has not discharged the burden of making out a *prima facie* case on inadequate award.
>
> ...
>
> (58) Apart from that it is also the view of this court that the Applicant has failed to discharge its legal burden to satisfy the court that the LA was wrong in choosing to accept the market value of the scheduled land recommended by its own chosen valuer or that the LA had in any way erred in assessing the market value of the scheduled land as at the acquisition date.
>
> (59) Having considered the matter carefully it is my view that the award for compensation of the market value of the scheduled land made by the Land Administrator was proper as well as adequate.

[54] In short, the comparable transactions used by the JPPH valuer to arrive at the market value of RM1,200 psm were not the most appropriate comparables. The respondent was of the opinion that the comparables used by the appellant's valuer were more appropriate to determine the market value as they had more commonalities with the scheduled land. Thus, for the

above reasons the learned Judicial Commissioner agreed with the Land Administrator and accepted the appellant's valuer's valuation as a better reflection of the market value. We do not find anything amiss in that. There are no discernible errors of law on the part of the learned Judicial Commissioner in so deciding. In fact, what the appellant claimed as the market value of the land acquired was awarded in full by the respondent. It would be rather amiss for the appellant to seek a higher valuation at the High Court after having gotten what was asked for at the land enquiry. In the circumstance, the issue of inadequacy of compensation for the value of land acquired does not arise.

[55] The law does not require the respondent, or the High Court, to have used the higher of the two markets valuation in all circumstances. Which of the valuation is to be used would be very much dependant on the facts. The facts of this case as analysed by the learned Judicial Commissioner does not warrant the use of the higher market value opined by the JPPH valuer. In the circumstance, we answer fifth question in the negative.

Sixth Question

[56] The sixth question is as follows:

> Whether the endorsement by the appellant's valuer of the higher valuation of the Scheduled Land by the respondent's valuer (JPPH valuation report) is sufficient to establish a *prima facie* case for the appellant under Paragraph 2 of the Third Schedule to the Act that the award for the Scheduled Land was inadequate?" (sixth question)

[57] For reasons discussed above, the inadequacy of the award in respect of the market value of the scheduled land does not arise once it is shown that the market valuation of the Government valuer is higher than that awarded by the Land Administrator. The inadequacy of the award of compensation must be established by taking into account the totality of the evidence, and the burden to establish a *prima facie* case that the respondent's award of compensation is inadequate lies with the applicant. This principle was well stated by Wan Yahya J (as he then was) in *Ong Yan & Anor v. Collector Of Land Revenue, Alor Gajah, Malacca* [1985] 1 LNS 105; [1986] 1 MLJ 405, in the following terms:

> In land acquisition case the burden is on the applicant to make out a *prima facie* case of inadequate award. Only when he succeeds in doing so would the respondent be called upon to introduce his evidence; otherwise the applicant's case must fail and the Collector's award should stand.

[58] This principle was reiterated by the Court of Appeal in *JH Capital Services Sdn Bhd v. Pentadbir Tanah Daerah Petaling* [2020] 1 LNS 241; [2020] 4 MLJ 1:

> [18] The argument advanced by the learned assistant state legal advisor for the respondent is that, to which we agreed, the burden is on the appellant to make out a *prima facie* case of inadequate award. Only when the appellant succeeds in doing so would the respondent be called upon to introduce their evidence; otherwise the appellant's case must fail and the land administrator's award should stand (see *Ong Yan & Anor v. Collector of Land Revenue, Alor Gajah, Malacca* [1986] 1 MLJ 405).

See also *Pengerang Farm Sdn Bhd v. Pentadbir Tanah Daerah Kota Tinggi* [2017] 1 LNS 66, and *Desa Kudalari Management Corporation v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2021] 1 LNS 107.

[59] Whether or not a *prima facie* case has been established is a question to be determined by the judge assisted by the two assessors on a careful consideration of the appellant's valuer's report. In the present case, the learned Judicial Commissioner had, after taking into consideration the views of the two assessors, found that the appellant had failed to discharge the burden of making out a *prima facie* case of inadequate award. The appellant submits that the appellant's valuer's valuation report dated 5 August 2019 and the rebuttal report dated 18 September 2019 which had endorsed the JPPH's higher market valuation are sufficient to establish a *prima facie* case for the appellant under para. 2 of the Third Schedule to the Act that the award of compensation was inadequate.

[60] Paragraph 2(1) of the Third Schedule to the Act provides that at a land reference to the High Court:

> 2. Valuer's report and oral evidence
>
> The applicant valuers report alone must establish a *prima facie* case for the applicant.

The applicant's valuer's report would include the applicant's valuer's rebuttal report pursuant to para. 1 of the Third Schedule to the Act:

> In this Schedule, unless the context otherwise requires:
>
> "valuer's report", in relation to the report by the valuer of one party to the proceeding, includes his reply to the report of the valuer of the other party to the proceedings.

[61] In *Pengerang Farm Sdn Bhd v. Pentadbir Tanah Daerah Kota Tinggi* (*supra*), the Government valuer did not tender a report to rebut the private valuer's report and thus counsel for the land owner canvassed the argument that since there was no valuation report to rebut the private valuer's report, the claim should be sustained in accordance with our adversarial system of justice. The Court of Appeal rejected this argument on the ground that the burden to proof the claim lies on the land owner. Vernon Ong JCA (as he then was) said as follows:

> Therefore, we do not think that a *prima facie* case is automatically made out on the mere production of the applicant's valuer's report. Whether or not the applicant's valuer's report establishes a *prima facie* case is a matter for the court to consider and determine. It follows that the non-production of the respondent's valuer's report in rebuttal does not automatically result in the applicant's valuer's report as having established a *prima facie* case.

[62] Similarly, we are of the view that the mere opinion of the valuer in the JPPH's valuation report, which is higher than that of the appellant's private valuer, would not by itself establish a *prima facie* case of inadequacy of compensation, even if subsequently endorsed by the appellant's valuer.

[63] The High Court when conducting a land reference shall have regard to the overall evidence and the applicable law in determining whether the compensation awarded by the Land Administrator was adequate or otherwise in the circumstance. The judge will have to make that determination by taking into consideration the opinion of the two assessors.

[64] The fact that the appellant's valuer had subsequently endorsed the higher valuation of the JPPH valuation would not by itself suffice to establish a *prima facie* case of inadequacy of compensation. After all, as stated by the Federal Court in *Ng Tiou Hong v. Collector Of Land Revenue, Gombak* (*supra*):

> ... estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence.

This is more so when the respondent had assessed and awarded the full market value as stated in the appellant's valuation report, and as claimed by the respondent at the land enquiry. Hence, the appellant would be estopped from claiming any higher market value by virtue of the provisions of para. 4(a) of the First Schedule to the Act, as discussed earlier. The appellant cannot overcome this legal hurdle at the land reference stage by getting the appellant's private valuer to endorse the higher market valuation opined by the JPPH valuer.

[65] Thus, we answer sixth question in the negative.

Seventh And Eighth Questions

[66] The appellant had framed the seventh and eighth questions which relate to the issue of severance in the following manner:

> Question 7
>
> Whether the remaining land (Plot A) that is severed by compulsory acquisition is legally inaccessible? If this question is answered in the affirmative, whether compensation pursuant to Paragraph 2(c) and/or (d) of the First Schedule of the Act ought to be granted for the loss of legal access to Plot A? ("seventh question")

Question 8

Whether Pengurusan Aset Air Berhad ("PAAB") as the acquiring body of the Scheduled Land has effectively admitted that there is no access to the severed portion (Plot A) of the Scheduled Land by its letters dated 1.6.2018 and 1.8.2018 in which the acquiring body has stated its agreement for the appellant to construct a bridge to connect the remaining portions of the Scheduled Land and provided technical specifications for the design and construction of the said bridge. ("eighth question")

[67] The acquisition of the appellant's land severed the scheduled land into two parts, namely, Plot A which is a triangular portion measuring approximately 12,381.49 square meters to the north and Plot B a trapezoidal portion measuring approximately 21,646.77 square meters to the south of the scheduled land.

[68] Counsel for the appellant contended that as a result of the severance Plot A is now landlocked without any ingress or egress. Further, it was contended that prior to the acquisition the scheduled land enjoyed a frontage onto Jalan Cheras Permai 4 and that the loss of access has resulted in various disadvantages. The appellant's primary complaint is that the severed portions would now have to be connected by a bridge which PAAB (the authority for whom the land is being acquired) had agreed in principle for the appellant to build subject to conditions and requirements to be provided by PAAB. In this respect, the appellant had estimated the cost of the bridge construction and related structures to be RM7,900,000. Hence, at the High Court it was submitted that the appellant's total claim of RM13,340,000 for severance and injurious affection ought to be allowed.

[69] However, the JPPH valuer was of the view that Plot A was not landlocked and that it was accessible through Jalan Sering 2 in an adjoining residential development and also through the road reserve in front of Lot 33123, 33124, 34098 and 34096 as well as through the road reserve in front of Lot 5697.

[70] The High Court accepted the JPPH valuer's views on access and found that Plot A was accessible through other routes and the same is expressed in para. [81] of the grounds of judgment:

[81] Be that as it may the need to build a bridge is unnecessary as Plot A can be accessed through the road reserves as suggested by the JPPH in his reply to the private valuer's report. In the JPPH's rebuttal reply it was stated that Plot A could have access through Jalan Sering 2 and another access route through the road reserves opposite Lots 33123, 33124, 34098 and 34096. Another access way suggested was through the road reserve in front of Lot 5697. Annexure 2 of the rebuttal was appended to indicate the access routes that could be used to enter and exit Plot A. Therefore, there was really no acute necessity for a bridge to be built to link the severed plots.

[71] Thus, the learned Judicial Commissioner, and both assessors, were of the view that despite the scheduled land being split into two by the acquisition, both plots were still of sizable area and economically viable for development. The assessors were of the view that Plot B did not suffer injurious affection nor was there any diminution in its value as a result of the severance. To that extent, both assessors agreed with the findings of the Land Administrator that there be award of compensation for severance and injurious affection only for Plot A and not Plot B.

[72] However, both assessors were of the view that the quantum of compensation calculated at the rate of 5% of the market value of Plot A and awarded by the respondent was inadequate and that it be increased. They were of the opinion that the quantum of compensation awarded by the Land Administrator for severance and injurious affection was not commensurate with the post-acquisition disadvantages attached to Plot A. One assessor suggested an increase to 25% and the other suggested an increase to 10% of the market value of Plot A. Having considered the opinion and recommendation of both assessors, the learned Judicial Commissioner found that Plot A was acutely affected by the severance and hence increased the award of compensation from 5% to 25% of the market value of Plot A. Thus, the quantum of compensation under this head was increased to a total of RM2,665,116.

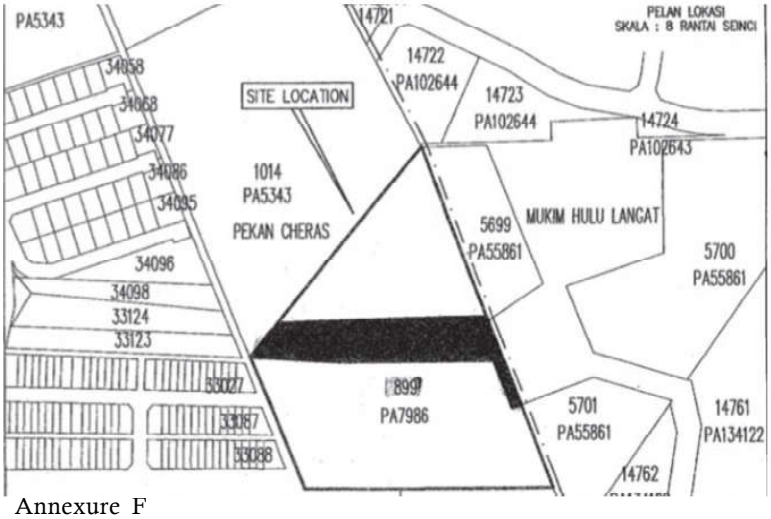
[73] Having considered the submissions and the evidence, we find that there is merit in the appellant's counsel's submissions. We find that Plot A is legally inaccessible and compensation pursuant to para. 2(c) and/or (d) of the First Schedule to the Act ought to be granted for the loss of legal access as part of injurious affection to Plot A. When Annexure 2 of the JPPH's rebuttal report is scrutinised, we failed to see any access to Plot A as contended by the JPPH's valuer. In fact, when counsel for the respondent was asked by this court to show where the access points to Plot A are on Annexure 2, counsel too was unable to do so. In fact, the plan annexed to the JPPH's valuer's rebuttal report is unclear and does not show any access to Plot A from any of the routes suggested by the valuer.

[74] A much clearer plan of the subject land and its surroundings can be seen in Annexure E of the record of appeal. This plan was filed at the land reference proceedings and it shows:

Annexure E

[75] When this plan is scrutinised, it can be seen that Plot A (which is the triangular portion above the acquired portion marked in black) is bordered by Lot 1014, Lot 5699 and the acquired portion. However, there is no access to Plot A from the road reserve in front of Lots 33123, 33124, 34098 or 34096 or Jalan Sering 2. As for the suggested access through Lot 5697, the said Lot is nowhere to be seen near Plot A.

[76] Annexure E above is also consistent with the plan in Annexure F of the JPPH's report which was prepared by JPPH itself for the land enquiry. Annexure F shows:



Annexure F

[77] It is clear from the plans in Annexure E and Annexure F of the JPPH's report, that Plot A is landlocked. This court had in *Kelab Renang Pulau Pinang v. Pentadbir Tanah, Daerah Timur Laut, Pulau Pinang & Anor* [2014] 5 CLJ 341; [2014] 6 MLJ 134 defined the term 'landlocked' by reference to *Black's Law Dictionary* as "surrounded by land, with no way to get in or out except by crossing the land of another". And in the present case that seems so for Plot A is not connected to any roads or road reserve and is fully enclosed by land and access to it is possibly gained only through the land of others. Hence, we agree with the appellant that the learned Judicial Commissioner had committed an error of law in this regard, where her finding of accessibility to Plot A does not accord with and is at variance with the available evidence. In fact, the PAAB, the body for whom the land was acquired, had effectively admitted that there was no access to Plot A by the contents of its letters dated 1 June 2018 and 1 August 2018 wherein PAAB had expressed its conditional agreement for the construction of a bridge to connect Plot A and Plot B. If indeed Plot A was accessible *via* the access roads suggested by the JPPH valuer, then there would be no necessity for PAAB to write the two letters stating their in-principle agreement for the construction of the bridge between Plot A and Plot B. Therefore, we answer the eighth question in the affirmative.

Ninth Question

[78] We then come to the ninth question, which is:

> Whether the appellant ought to be compensated for the cost of constructing the bridge to provide access to the severed portion (Plot A) of the Scheduled Land under the appellant's claim for injurious affection. ("ninth question")

[79] The appellant submits that it ought to be compensated for the cost of constructing the bridge to provide access to the severed portion (Plot A) under injurious affection. Injurious affection to the remaining unacquired land is one of the matters that must be considered in assessing compensation under s. 2(d) of the First Schedule to the Act. In this case, the High Court had in fact increased the award for severance/injurious affection to Plot A from 5% of the market value to 25%.

[80] Claims for severance and injurious affection are often difficult to substantiate, and the quantification and award of compensation in the case of severance must be considered following a thorough examination of all the probable consequences of the acquisition and it must be based on available evidence. See: *Datuk Dr. Murugasu Sockalingam & Anor v. Superintendent Of Lands And Surveys, First Division, Sarawak* [1983] 1 LNS 30; [1983] 2 MLJ 336.

[81] In increasing the compensation for severance and injurious affection as regards Plot A, the High Court had taken into account the following factors:

(i) the land no longer be developed as one compact holding;

(ii) increase in costs of development of both Plots A and B separately;

(iii) costs in backfilling the surrounding areas to achieve the required gradient;

(iv) extra retaining structures to be built; and

(v) drainage to be put in to avoid ponding of water.

[82] The claim for the cost of the bridge was disallowed on the basis that Plot A was not landlocked. However, we find that this is an error on the part of the learned Judicial Commissioner. Plot A is in fact landlocked and there must be some compensation awarded for the appellant to obtain adequate access to Plot A. Though the learned Judicial Commissioner was of the opinion that Plot A was not landlocked, she had nevertheless noted as follows:

> [80] As regards the plan to link or enjoin both plots across the severed land, there were two options suggested. This is found in the report dated 15.5.2018 prepared by the applicant's architect (WT Partnership). The first option was to construct a road which would cost RM600,000. The other option was to construct a bridge. The estimated cost for building the bridge is RM7,900,000. The cost of construction appears to cost far more than the market value of the scheduled land.

[83] The appellant has not made out a case showing that the only viable option for access is a bridge between Plot A and Plot B. When the land was acquired, it was zoned for "Institution" and its category of use was 'Building' with an express condition of 'residential building'. The appellant had not applied for any planning permission to develop the land. Unlike in *Boustead Estates Agency Sdn Bhd v. Pentadbir Tanah, Baling, Kedah* [2007] 4 CLJ 375; [2007] 5 MLJ 401, where the land acquired was part of an active rubber and oil palm estate, the land in our case did not have any ongoing economic or commercial activities. When as a result of severance, there were disruption to ongoing commercial activities, such as in *Boustead Estates*, an award of compensation by the court included the costs of bridge and underpass culverts. However, in the present case, it is merely a case of access to Plot A which is landlocked. Access to Plot A can be obtained by procuring a private right of way or applying to the Land Administrator for access to be provided. See: *Kelab Renang Pulau Pinang v. Pentadbir Tanah, Daerah Timur Laut, Pulau Pinang & Anor* [2014] 5 CLJ 341; [2014] 6 MLJ 134 CA.

[84] In the present case, the appellant's own architect has proposed a cost-effective option, and that is to build a road connecting the two portions at the cost of RM600,000. In our opinion, this is a pragmatic and cost-effective solution, and there is no need for the appellant to construct a bridge at such a phenomenal cost.

[85] Hence, whilst answering the ninth question in the negative, we nevertheless find that the appellant ought to be compensated with an additional sum of RM600,000 being the cost of construction of the road, and this we order the respondent to pay the appellant.

Tenth Question

[86] And now we move on to the final and tenth question, which is:

> Whether an application for building or planning permission is a requirement or precondition to claim for compensation under Paragraph 2(a), (c) and/or (d) of the First Schedule to the Act? (tenth question)

[87] This question is posed in relation to the High Court's rejection of the appellant's claim for loss of development potential under the head of injurious affection for the main reason that there was no application for planning permission made at that time. In doing so, the learned Judicial Commissioner had noted as follows in the grounds of judgment:

> (75) I agreed with the Assessors' opinion that Plot B did not suffer from any adverse effects as it is still viable and has potential for any future development despite the decrease in size.
>
> (76) I did not agree with the Applicant's submissions for costs of potential housing development on the scheduled lands for the main reason that there has been no application made to the relevant authorities for planning permission. At most this was an afterthought arrived at to obtain an enhanced award than already what was given and therefore it is not allowed.
>
> (77) The Government Valuer in his reply to the Applicant's Valuation report noted that there were TNB pylons criss-crossing the scheduled land. Although this is an important piece of information it appeared to have been omitted in the Architect's layout plans. No building permission is allowed where there are TNB pylons. This reason alone would have hindered any plans to develop the area. The Applicant would not have been able to surmount this obstacle.
>
> (78) I also agree with the objections raised by the JPPH at pp. 8 to 13 in his Reply to the Private valuer's Valuation Report. In his reply the JPPH valuer pointed out that the TNB transmission lines as shown in p. 9 of the report ran through the scheduled land. The estimation of the reduction of the development density as submitted by the Applicant is thus incorrect and unsubstantiated.

[88] Obviously, the learned Judicial Commissioner had considered various factors affecting the land, including the non-existent planning permission, before rejecting the appellant's claim for loss of development potential under the head of injurious affection. The learned Judicial Commissioner had not stated that it is a precondition for such an award, but merely that it is one of the primary considerations.

[89] We agree with submissions of learned counsel for the appellant that para. 2(d) of the First Schedule to the Act provides that regard must be had not only to damage that are actually sustained by the applicant but also damage that is likely to be sustained. See *Collector Of Land Revenue v. Looi Lam* [1981] 1 LNS 102; [1981] 1 MLJ 300 FC. In keeping with that principle, this court had in *Desa Kudalari Management Corporation v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2021] 1 LNS 107; [2021] MLJU 143 CA stated that the adverse effect on the development potential of land must be considered in determining injurious affection and whether or not the planning approval had been obtained is not a determinant factor.

[90] However, we must add that whether there is prospect of planning permission being obtained for a proposed development would be an important consideration. In the present case apart from the fact that TNB high tension power grid lines were criss-crossing the scheduled land, thus making a residential development on the land a non-starter, there was also the issue of the land being within an area zoned for institution and not residential. Even though the category of use for the land is building, with an express condition of residential buildings, the local authority's zoning condition would preclude any residential development on the land. The appellant would have to surmount all these hurdles to developing the land as a residential development. Hence, the observation by the learned Judicial Commissioner that the planning permission is yet to be obtained is relevant when the peculiar facts of the case are considered and when these facts are considered in their totality the learned Judicial Commissioner is not misplaced in her observation about the non-existent planning permission.

[91] Whilst planning permission for the land is not a prerequisite or precondition to claim for compensation under para. 2(a), (c) and/or (d) of the First Schedule to the Act, the existence or otherwise of planning permission or development order would be a relevant consideration when the overall factual matrix of the case is considered. There must be realistic prospect of the proposed development taking place. The relevance of the planning permission to a claim for compensation for loss of development potential under para. 2(a), (c) and/or (d) of the First Schedule to the Act is very much fact-driven and would depend on the peculiar circumstance of each case. It is not merely sufficient to submit an architect's proposed development plan and make a claim based on that proposed plan when there is no prospect for

planning approval of that plan. The applicant must show that legally there are prospects for the plan to be approved and the development realised. In short, the proposed development plan must meet the requirements of the planning authority and conform to the existing statutes, rules and regulations governing such development. Only then would the applicant have a strong case to claim for loss of development potential.

[92] Thus, our answer to the tenth question is in the negative, *albeit* with the above stated qualifications.

Conclusion

[93] Having answered all ten questions, only one of the answers, *ie*, to the ninth question, bears consequence to the compensation awarded. Based on our finding that Plot A is landlocked without any road access, we have awarded the sum of RM600,000 as additional compensation for the construction of the road connecting Plot A and Plot B.

[94] The appellant is also entitled to 5% late payment charges from the date of Borang K, and so we order.

[95] There shall be no order as to costs.